

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
(Boston)

FILED
2004-3 P 2:49
DISTRICT COURT
DISTRICT OF MASS.

Jack Rogers and Paul Pinella,

Plaintiffs,

v.

Comcast Corporation
and AT&T Broadband,

Defendants.

Civil Action No.: 04-10142 EFH

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION
FOR LEAVE TO FILE A REPLY BRIEF IN SUPPORT OF
THEIR MOTION TO COMPEL ARBITRATION**

OR, IN THE ALTERNATIVE

PLAINTIFFS' MOTION TO FILE A SURREPLY

Plaintiffs oppose Defendants' Motion for Leave to File a Reply Brief in Support of Their Motion to Compel Arbitration ("Defendants' Motion") on the following grounds:

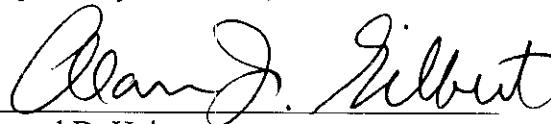
1. Defendants' Motion does not comply with Local Rule 3.01(b) because it omits the certification that counsel conferred and attempted to resolve or narrow the dispute.
2. Defendants' proffered reply improperly raises the issue of federal preemption for the first time. Because this issue was not raised earlier, Plaintiffs did not address it in their Opposition.
3. Moreover, in their reply brief, Defendants make a number of errors of fact and law to which Class Plaintiffs have also had no previous opportunity to respond.
4. Under these circumstances, Plaintiffs will suffer prejudice if the Court allows Defendants to file a reply. Accordingly, the Court should deny Defendants' Motion.

5. If the Court allows Defendants to file their reply, a surreply is necessary to show that Defendants' preemption argument is waived, and even if considered, Defendants' preemption argument is meritless. A surreply is also necessary to respond to the errors of law and fact raised in Defendants' reply and would assist the Court in its consideration of the pending motion to compel arbitration.

WHEREFORE, Plaintiffs request that Defendants' Motion be DENIED. In the alternative, if Defendants' Motion is not denied, Plaintiffs request that the Court GRANT their Motion to File a Surreply. A copy of that Surreply is filed herewith. This Surreply is identical to the Surreply filed today in the case of *Kristian v. Comcast Corporation*, No. 03CV12466 EFH, except for an additional paragraph relating to Class Plaintiff Pinella found at page 5 of the attached Surreply.

Dated: August 2, 2004

Respectfully submitted,



Samuel D. Heins
Stacey L. Mills
Alan I. Gilbert
David Woodward
Jessica N. Servais
HEINS MILLS & OLSON, P.L.C.
3550 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Tel: (612) 338-4605
Fax: (612) 338-4692

John Peter Zavez (#555721)
Noah Rosmarin (#630632)
ADKINS KELSTON & ZAVEZ, P.C.
90 Canal Street
Boston, MA 02114
Tel: (617) 367-1040
Fax: (617) 742-8280

Ann D. White
Carol A. Mager
MAGER WHITE & GOLDSTEIN, LLP

One Pitcairn Place, Suite 2400
165 Township Line Road
Jenkintown, PA 19046
Tel: (215) 481-0273
Fax: (215) 481-0271

Barry Barnett
Max Tribble, Jr.
SUSMAN GODFREY LLP
901 Main Street, Suite 4100
Dallas, TX 75202
Tel: (214) 754-1900
Fax: (214) 754-1933

Jonathan Shaw
SUSMAN GODFREY LLP
1201 Third Avenue, Suite 3100
Seattle, WA 98101
Tel: (206) 516-3836
Fax: (206) 516-3883

Robert N. Kaplan
Gregory K. Arenson
Christine M. Fox
KAPLAN FOX & KILSHEIMER LLP
805 Third Avenue, 22nd Floor
New York, NY 10022
Tel: (212) 687-1980
Fax: (212) 687-7714

Lynn Lincoln Sarko
Mark A. Griffin
John H. Bright
Raymond J. Farrow
KELLER ROHRBACK, L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Tel: (206) 623-1900
Fax: (206) 623-3384

Michael Hausfeld
Stewart Weltman
COHEN, MILSTEIN, HAUSFELD
& TOLL, P.L.L.C.
1100 New York Avenue, N.W.
Suite 500, West Tower
Washington, DC 20005
Tel: (202) 408-4600


Fax: (202) 408-4699

Marc H. Edelson
HOFFMAN & EDELSON
45 West Court Street
Doylestown, PA 18901
Tel: (215) 230-8043
Fax: (215) 230-8735

ATTORNEYS FOR PLAINTIFFS

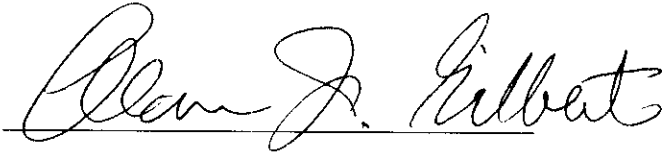
CERTIFICATE OF CONFERENCE

Pursuant to L.R. 7.1(A)(2), I certify that counsel for Plaintiffs have conferred in good faith with counsel for the defendants in an attempt to resolve the issues that are the subject of this Motion, but that the parties were unable to reach an agreement. Court action on this Motion is therefore required.


Alan I. Gilbert

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on Defendants' counsel of record by United States Mail on this 2nd day of August, 2004, addressed as listed below.



Darryl J. May
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
Tel: (215) 864-8103
Fax: (215) 864-9167

George L. Paul
WHITE & CASE LLP
601 Thirteenth Street, N.W.
Suite 600 South Washington, D.C. 20005-3807
Tel: (202) 626-3600
Fax: (202) 639-9355

Jaime Bianchi
WHITE & CASE LLP
Wachovia Financial Center, Suite 4900
200 South Biscayne Boulevard
Miami, FL 33131-2352
Tel: (305) 371-2700
Fax: (305) 3585744

Counsel for Defendants